IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Arjun Singh v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.6066/2005
under Articles 226 and 227 of the Constitution of India.

Date of Order : 9th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. L.R.Mehta, for the petitioner.
Mr. N.M.Lodha, Addl.Advocate General.
Mr. A.K.Sharma]
Mr. M.R.Singhvi] for the respondents.
Mr. Vikas Balia]
Mr. S.K.Vyas, Govt.Advocate for the respondent No.8.

BY THE COURT :

By the orders dated 30.9.2005 (Anxs.10 and 11) the Additional Director (Mines), Udaipur Zone, Udaipur while exercising powers under Rule 8 of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as “the Rules of 1986”) rejected the applications preferred by the petitioner under Rule 5 of the Rules of 1986 for grant of mining lease pertaining to minor mineral i.e. marble near village Nirjarna, Tehsil and District Rajsamand.

The Additional Director rejected the applications on two grounds, those are : (1)the day on which the petitioner made application for grant of mining lease the area concerned was not vacant and, therefore, the application is premature; and (2)the area pertaining to which the application is made is part of a khatedari land and the concerned khatedar granted his consent in favour of some other applicant.

By the orders dated 1.10.2005 (Anxs.4,5 and 6) the Additional Director (Mines), Udaipur Zone, Udaipur granted mining lease in favour of respondents No.5, 6 and 7 with regard to the area for which the petitioner also applied.

The orders dated 30.9.2005 (Anxs.10 and 11) and the orders dated 1.10.2005 (Anxs.4 and 5) alongwith consequential lease agreements are under challenge in the present writ petition.

While giving challenge to the orders referred above, it is contended that the petitioner made applications for grant of mining lease on 21.9.2005 and on the same day the Mining Engineer, Rajsamand, Division-II, pointed out certain deficiencies in the applications and called upon the petitioner to remove the same within a period of 15 days but the Additional Director (Mines) without waiting for the period

prescribed rejected the applications on 30.9.2005 and also granted the mining lease in favour of the respondents No.5 to 7 by the orders dated 1.10.2005 (Anxs.4, 5 and 6).

According to counsel for the petitioner the act impugned of the official respondent is in apparent violation of principles of natural justice and is also an out come of malafides and extraneous considerations. To substantiate the contention of malafides it is averred in the petition seeking writ that the respondent No.8 is a sitting Minister for State in Government of Rajasthan and is also an influential mine owner. He is master mind in managing the grants of mining leases in favour of the respondents No.5 to 7. It is also alleged that the respondents No.5 and 6 are in close relation to the respondent No.8 and, therefore, he is highly involved in process of allotment of mining leases to his relatives and in this series he prevailed over the authorities of mining department for grant of mining leases in favour of the respondents No.5 to 7.

It is pressed hard by counsel for the petitioner that an unusual haste in entire process of allotment of mining lease was adopted only to extend favour to the respondents No.5 to 7 and while doing so no care was taken to see that the petitioner applied for grant of mining lease quite prior to the

respondents No.5 to 7 and the mines department allowed 15 days time to the petitioner to remove deficiencies in applications and the time granted was to expire on 5.10.2005.

Validity of the orders impugned rejecting the applications made by the petitioner for grant of mining lease is also questioned on the ground that the reasons given to do so are non-existent. It is urged that the area for which the petitioner applied for grant of mining lease was not covered under any lease agreement as no mining lease in favour of M/s Mewar Marbles as stated in the order impugned was ever granted and executed, as such the area in question in legal terms was vacant. The mines department was also treating the same as vacant area and for this reason only the applications submitted by the petitioner were accepted by the Mining Engineer and the petitioner was called upon to remove the deficiencies within a period of 15 days. The applications, according to counsel for the petitioner, therefore, were erroneously treated premature.

It is further contended by counsel for the petitioner that there was no need for getting any consent from the khatedar for the reason that a khatedar possess surface rights with regard to the land and the land of the area in question was under operation of mining from last about 20 years, as such

the surface stood broken. The area in question being under heavy mining operation beyond the earth surface stood vested with the State Government with regard to all rights relating to minerals, mines and quarries. Beside above, the counsel for the petitioner also tried to establish by placing reliance upon some revenue record that the area in question has already been treated as mining area, as such no consent of khatedar was required.

On being called upon for hearing by this Court, the respondents No.1 to 4 and the respondents No.5, 6 and 7 submitted reply to the writ petition. An affidavit sworn in by the respondent No.8, against whom malafides are alleged, is also placed on record. While defending the orders impugned the respondents No.1 to 4 denied the allegations of malafide and extraneous considerations. The violation of principles of natural justice as alleged by the petitioner is also denied by the respondent State and its authorities. In reply to the writ petition it is also denied that the area in question was vacant on 21.9.2005, the day on which the petitioner submitted applications under Rule 5 of the Rules of 1986 for grant of mining lease. It is also denied by the respondents that there was no need to have consent of khatedar for getting a mining lease in the khatedari land.

The respondent No.8 on oath denied the allegations of malafides by making statement as under:-

> "1. That I am State Minister for Irrigation in the Government of Rajasthan. I have been impleaded as respondent No.8 in the abovenoted writ petition.
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> 2. That I state that I have gone through the contents of the abovenoted writ petition filed by the petitioner, Arjun Singh, inter-alia, for quashing orders dated 30.09.2005 (Annexures – 10 & 11) and Lease Deeds (Annexures – 7, 8 & 9) made in favour of respondents No.5 to 7. I state that I am in no way concerned with the aforementioned orders and no relief has been claimed against me by the petitioner. The petitioner has chosen to make false and baseless allegations against me relating to aforementioned grants for ulterior motives and in order to malign me and to harm my image and reputation.
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> 3. That I deny each and every allegation made against me save to the extent the same are matter of record and specifically admitted by me herein.
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> 4. That I state that the reason for my impleadment given by the petitioner in para 9 of the writ petition alleging "That the petitioner has impleaded respondent No.8 to this petition because he is the master mind to manage the grants of mining leases in favour of respondents No.5 to 7" is false

and baseless. I state that as a State Minister for Irrigation I do not exercise any power or control over the Government functionaries in the Department of Mines. While I do not dispute my relationship with respondent Nos.5 & 6 but this relationship has no relevance or role in the matter of grant of mining leases to these respondents in khatedari land in accordance with law. It is for the respondent Nos. 5, 6 and 7 to arrange their own affairs.

5. That I state that I and my family have been in mining business for last over 12 years long before I became a State Minister in May, 2004. I state that I and other members of my family have been granted mining leases in accordance with law. The mining leases are in khatedari land and not in Government land. I state that M/s Shiv Nagnechiya Marbles Pvt. Ltd. in which I am one of the directors alongwith my wife, is a Private Limited Company incorporated under the provisions of the Companies Act way back on 04.10.1995 and had started its mining operations in May, 1996. I state that none of the Mining Leases held by me and my family members were granted after I became a State Minister in the present Government. I deny that the Mining Leases were granted on account of the fact that I am an influential person. I state that the details given by the petitioner against me and my family are incomplete, irrelevant and misleading. I State that the suggestion made by the petitioner that " all these details clearly go to show that respondent No.8, a State Minister in the present State Government is

> highly involved in the allotment of Mining Leases in his favour and in favour of his other family members and in these series, he has prevailed upon the authorities in the Mining Department for grant of mining leases in favour of respondent No.5, 6 and 7 (respondent No.5 & 6 being his nearest relatives)" is incorrect, misleading and unjustified. I deny that I have prevailed upon the authorities in the Mines Department for grant of mining leases in favour of respondent Nos. 5, 6 & 7."

The remaining respondents have also denied the allegations of malafides and defended the orders impugned in general, however, the learned counsel appearing for respective respondents without entering into merits of the dispute contended that the High Court exercises the discretionary jurisdiction under Article 226 of the Constitution of India and this discretion vested with the Court in normal course should not be exercised in exclusion to the available statutory remedy. It is pointed out by learned counsel that the validity of the orders impugned can be effectively adjudicated by availing remedy provided under the Rules of 1986. The orders rejecting the application for grant of mining lease are appealable before the Government of Rajasthan as provided under Rule 43 of the Rules of 1986 and validity and propriety of the orders granting mining leases in favour of the respondents No.5 and 7 can be examined

in accordance with the provisions of Rule 47 of the Rules of 1986. The Rules 43 and 47 of the Rules of 1986 read as under:-

> "43.Appeal.-(1)Any person aggrieved by an order of Suptdg. Mining Engineer [Superintending Mining Engineer (vigilance), Mining Engineer (vigilance)]/Mining Engineer or Assistant Mining Engineer passed under these rules in the following matters shall have the right of appeal to the Director:-
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> (a)refusing the grant or renewal of mining lease, quarry licence or grant of royalty collection contract;
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> (b)canceling or terminating mining lease or quarry licence or royalty collection contract or forfeiting security deposit in whole or in part;
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> (c)refusing to permit transfer of quarry licence or mining lease;
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> (d)assessment of royalty; and
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> (e)imposition of penalty.
>
> (2)Any person aggrieved by any order passed in appeal under sub-rule(1) or any other order passed by the Director under these rules shall have the right of appeal to the Government.
>
> (3)Any person aggrieved by any order of the Director by virtue of the powers delegated or otherwise exercised under these rules on

the matters mentioned in sub-rule(1) shall have the right of appeal to the Government.

(4)The orders passed by the Government in appeal shall be final."

47.-Revision.-(1)The State Government in respect of any order, whether in appeal or otherwise passed under these rules by the Director/[Additional Director (Mines)]/ Superintending Mining Engineer, [Superintending Mining Engineer (Vigilance), Mining Engineer (Vigilance)], Mining Engineer or Assistant Mining Engineer may on an application by an aggrieved party made within 3 months of [communication of] such order in this behalf or of its own motion call for and examine the connected records for the purpose of satisfying itself as to the correctness, legality or propriety of the order and may confirm, modify or rescind such order:

Provided that an application for revision may be admitted by the Government after the said period of 3 months if the Government is satisfied that the applicant had sufficient cause for not filling the revision application in time.

(2)Every application for revision shall be made in Form No. 14 in duplicate and shall be accompanied by a treasury challan of Rs. [500/-] deposited as fee in the Government treasury under the [relevant] head of Account."

Learned counsel for the petitioner also not denied the availability of remedy as stated above, however, it is contended by him that if the action of the State is arbitrary and unreasonable, so as to violate the constitutional mandate of Article 14, then the High Court must come forward to rescue a citizen aggrieved. According to him wherever and whenever there is any violation of principles of natural justice, the action of the State is in violation of a fundamental right of a citizen and the action impugned lacks jurisdictional competence, then the Court must exercise its power to issue prerogative writs under Article 226 of the Constitution of India. It is also contended by counsel for the petitioner that looking to the fact that the respondent No.8 is an influential person in the Government system, therefore, the authorities in executive side shall not be in position to circumvent his pressure to operate in favour of the respondents No.5 to 7. It is asserted by him that in present set of facts and circumstances the remedy provided under the Rules of 1986 shall not be en efficacious and effective alternative remedy available to the petitioner.

Heard counsel for the parties.

Under Article 226 of the Constitution of India the High Court is having wide discretion to issue prerogative writs, orders or directions, as the

case may be. The discretion to exercise the powers vested with High Court rests upon various principles, including doctrine of exhaustion of statutory remedies. It is not a rule of law but a self-evolved restrainment to the effect that the discretion vested with the High Court under Article 226 should not be exercised if an effective statutory remedy is available under public law, however, in no case it curtails discretion of the Court. It is to be determined by the Court having regard to the facts and circumstances of each case as to when such discretion is to be exercised or refused to be exercised. In an appropriate case irrespective of availability of alternative remedy the High Court may exercise its powers under Article 226 of the Constitution of India. In a case where a writ is sought for enforcement of fundamental rights, where there is failure of principles of natural justice, where action impugned lacks jurisdiction and for other valid and legitimate reasons for which the Court thinks it necessary, it may exercise the discretionary powers vested with it under Article 226 of the Constitution of India. No hard and fast rules can be laid down and no water tight compartments can be made while execution of doctrine of exhaustion of statutory remedies.

As held by Hon'ble Supreme Court in the case of State of Himachal Pradesh v. Gujarat Ambuja Cement Limited, 2005 AIR SCW 3727, it is also required to be

kept in mind by the High Court that an allegation of infringement of fundamental rights, violation of principles of natural justice and the issue pertaining to lack of jurisdiction can be the ground to entertain a writ petition, but in normal course High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the route of jurisdiction, something which would show that it would be a case of pulpable injustice to the petitioner to force him to adopt the remedies provided by the statute. Ordinarily, High Court may also deny to entertain a writ petition which requires settlement of disputed facts for its adjudication by leading evidence, both oral and documentary.

The preliminary objection raised by the respondents is required to be examined in light of general principles governing the doctrine of exhaustion of statutory remedy, as discussed above. The case of the petitioner is that the orders impugned are out come of the malafides and extraneous considerations. Specific allegations of malafides are made by the petitioner in writ petition which are denied by the respondents and specifically by the respondent No.8 by way of filing an affidavit. It is true that the respondent No.8 has admitted his relation with the respondents No.5 and 6 but he has denied assertion of his undue pressure in granting

mining leases to them. The allegations levelled by the petitioner with regard to malafides are required to be established by sufficient evidence. For the purpose evidence in oral as well as documentary or by way of circumstances shall be required to be adduced.

The writ petition also involves disputed questions of facts with regard to question as to whether the surface of the area concerned was intact or broken on the day petitioner and the respondents No.5 to 7 submitted applications for grant of mining leases and also whether the area in question was vacant or not on 21.9.2005. All the questions involved in the writ petition beside the legal issues also have complicated questions of disputed facts which cannot be resolved in writ jurisdiction.

This Court while exercising powers under Article 226 of the Constitution of India does not feel itself sufficiently equipped to settle these highly disputed facts in the instant matter.

The appellate authority under Rule 43 of the Rules of 1986 and the revisional authority under Rule 47 of the said Rules are clothed with wide powers to adjudicate all the questions raised by the petitioner in present writ petition. The appellate authority as well as the revisional authority can effectively, efficaciously and objectively adjudicate the issues

involved in the controversy. The apprehension of the petitioner that the appellate authority as well as the revisional authority shall not be able to circumvent pressure of the respondent No.8, while considering and deciding the appeal and revision, is also ill-founded. The presumption is that the statutory authorities always act objectively and in accordance with law, if not otherwise proved. I do not find any reason to believe that the statutory authorities while considering the appeal or the revision, if any filed by the petitioner, will act under pressure of any person including the respondent No.8.

The remedy provided under Rules 43 and 47 of the Rules of 1986 are efficacious remedies available to the petitioner for redressal of his grievance. Looking to all the facts and circumstances of the case I do not consider the present one is a case fit to exercise discretion vested with this Court under Article 226 of the Constitution of India without getting the petitioner exhausted with the remedy provided under the statute.

Accordingly, the writ petition deserves to be dismissed. However, I consider it appropriate to direct that if in the event the petitioner files appeal against the orders rejecting his application for grant of mining lease within a period of three weeks from today, then the same shall be entertained

by the appellate authority. If any revision is preferred by the petitioner against the orders granting mining leases in favour of the respondents No.5,6 and 7 then the revisional authority shall also entertain the same. The appellate authority and the revisional authority shall decide the appeals as well as the revision petitions preferred by the petitioner as above in accordance with law and by giving speaking and reasoned orders dealing with all the contentions pressed into service by the petitioner. The appellate authority as well as the revisional authority are expected to decide the appeal and revision petition respectively, expeditiously as far as possible within a period of three months from the date of their presentation.

With the directions above the writ petition is dismissed.

(GOVIND MATHUR),J.

kkm/ps.